

114 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31981-2022 (O&M)

Date of decision: 13.12.2022

Satish Kumar Saini

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Petitioner-Mr. Satish Kumar Saini in person.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

CRM-25764-2022

Allowed as prayed for.

CRM-44889-2022

This application has been filed under Section 482 Cr.P.C.
seeking early hearing of the instant petition.

In view of the averments made in the application, the same has
been rendered infructuous as the main case is listed today.

CRM stands dismissed as having been rendered infuctuous.

CRM-35532-2022

This application has been filed under Section 482 Cr.P.C.
seeking permission of this Court to take on record the amended petition.

Notice in the application was issued on 18.10.2022 and the
learned State counsel sought time to file reply. But no reply has been filed
thereto.

In view of the averments made in the application, the same is
allowed subject to all just exceptions and amended petition is taken on
record.

CRM stands disposed off.

CRM-M-31981-2022

This petition has been filed for setting aside the orders dated 30.08.2022; 27.07.2022; 15.07.2022 & 02.09.2019 (Annexure P-1, P-2, P-3 & P-4, respectively), passed by the learned Additional Chief Judicial Magistrate, Mohali, in cross version case bearing No. CHI/84/2017 arising out of FIR No.49 dated 19.05.2015 registered at Police Station Phase-11, Mohali and further seeking issuance of directions to the learned trial Court to primarily conclude the trial in FIR version case bearing No. CHI/77/2017 and for expunging off the evidence of PW-1/Dr. Paramdeep Singh (Annexure P-5) recorded on 27.07.2022 by the learned trial Court in the cross-version case and to stay the proceedings of the learned trial Court under the cross-version till the pendency of this petition.

Petitioner, who is present in person, contends that the present case is squarely covered by the judgment of 'Lakhbir Singh and another Vs. State of Punjab' 2019 (4) R.C.R. (Criminal) and of the judgment passed by the Hon'ble Supreme Court in 'Nathi Lal Vs. State of U.P.' 1990 (supp) SCC 145 and 'State of M.P. Vs. Mishrilal (Dead) and others' Criminal Appeal No. 489 of 1996. He relies upon para 2 of the judgment 'Nathi Lal' (supra) which reads as under:-

'2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments

urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.'

The above judgment has also been dealt with in 'State of M.P. Vs. Mishrilal (Dead) and others' in Criminal Appeal No. 489 of 1996 decided on 02.04.2003 and relies upon paras No.7 & 8 of the said judgment which reads as under:-

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross cases cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case (supra). The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.”

The learned State counsel fairly submits that the present case is covered by the judgment of the Hon'ble Supreme Court in 'Nathi Lal Vs. State of U.P.' 1990 (supp) SCC 145 and 'State of M.P. Vs. Mishrilal (Dead) and others' Criminal Appeal No. 489 of 1996 decided on 02.04.2003.

I have heard learned counsel for the parties and perused the records.

So far as challenge to the order dated 02.09.2019 passed by the learned trial Court is concerned on an application moved by the Petitioner accused for postponement of proceedings till final arguments in case titled as 'State Vs. Ramandeep Singh' is done, whereby, his application was dismissed, the petitioner has preferred CRM-M-38071-2019 before this Court by placing reliance upon the 'Lakhbir Singh' judgment (supra), whereby, the impugned order dated 02.09.2019 was modified by this Court vide order dated 04.07.2022 to the extent that though version and cross-version will be tried together by the same Court, however, evidence will be reported separately and both cases version and cross version will be decided by passing separate judgments though on the same day.

By order dated 15.07.2022 passed by the learned trial Court, case was adjourned to 27.07.2022 and on 27.07.2022; PW-1-Dr.Paramdeep Singh was examined in cross-case, wherein, petitioner is an accused and an opportunity was given to file reply to application filed for adjourning the proceedings *sine die*.

Vide order dated 30.08.2022; the trial Court has dismissed the application, wherein, *sine die* adjournment was requested by the petitioner/accused in cross-version case by saying that in view of the ratio laid down by the judgments cited by the accused himself, the version and cross-version are being tried together by the same Court and evidence will be recorded separately as is being done presently also. Both cases will be decided by passing separate judgments on the same date on conclusion of evidence and hearing of arguments.

In view of the facts as enumerated above, this Court deems it appropriate to direct the trial Court to proceed with both the cases (version

and cross-version) in accordance with law in the light of the directions contained in the Division Bench Judgment of this Court titled as 'Lakhbir Singh and another Vs. State of Punjab' 2019 (4) R.C.R. (Criminal) and of the judgment passed by the Hon'ble Supreme Court in 'Nathi Lal Vs. State of U.P.' 1990 (supp) SCC 145 and 'State of M.P. Vs. Mishrilal (Dead) and others' Criminal Appeal No. 489 of 1996.

The present petition stands disposed off accordingly.

13.12.2022

Neha

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No